**COURT NO.2**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

SPECIAL APPEAL NO. 81 OF 2004

C.B.S.E. & Another ……. **Appellants**

**Versus**

Mayank Gumber & Another ….. **Respondent No. 1**

***Sri Alok Singh, learned counsel for the Appellant.***
***Sri R.P.Nautiyal., learned counsel for Respondent No. 1.***

**Coram: Hon. P.C. Verma,J.**
**Hon. B.C. Kandpal,J.**

**Dated: December 02, 2004**

Heard, learned counsel for the appellant.

This is an appeal by the appellant impugning the judgment dated 24.09.2004 passed by the learned single judge of this Court in Writ Petition No. 900 of 2004 directing the appellant to scrutinize the answer books of the respondent/ petitioner in the presence of the respondent/ petitioner and their guardians alongwith the assistance of subject expert after giving notice to the respondent / petitioner by 15th October, 2004.

The learned counsel for the appellant submits that the scrutiny of the answer books has already been done, however even if the respondent/ petitioner are not satisfied, it can be redone as per clause 61 of Examination Bye-laws but the gambit of the order gives a direction as if revaluation is to be done, which is not permissible under the byelaws.

The writ petition was filed on 23.09.2004 and the petition has been disposed of on the first day of hearing without giving an opportunity to the appellant to put forward their version by way of filing a counter affidavit. In this appeal, the appellant has stated the facts giving out the details of the marks obtained by the respondent/petitioner, which shows that the respondent/petitioner cannot be said to be of Brilliant Student and have a good academic record.

The learned counsel for the appellant submits that if the application is made, the scrutiny shall be made as per clause 61 of Examination Bye-laws. Since, the learned single judge had directed to dispose of the application for scrutiny of answer sheets by 15th October, 2004, but no application has been made so far. If the application has been filed before the 15th October, 2004, the same shall be disposed of within seven days from today in accordance with clause-61 of the Examination Bye-laws.

To this extent, it is needless to say that after the order was passed in this appeal, the order of the learned single judge dated 24.09.2004 stands merged in this order.

The appeal is disposed of accordingly.

**(B.C. Kandpal,J. )** **(P.C. Verma,J.)**

02-12-2004
Rajeev Dang